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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 272 & 272-A of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

A RAJESH & CO.,

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.

NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal has referred the following common question for the opinion of this Court at the instance of the revenue :

"Whether, the Appellate Tribunal is right in law and on facts in cancelling the penalty levied under section 271(1)(a) for delay in filing return on the ground that advance tax paid by the assessee firm was more than the assessed tax?"

2 The assessment years involved are 1983-84 and 1984-85. The Income Tax Officer imposed penalties of Rs.8,958/- and Rs.3,346/- respectively u/s.271(1)(a) of the Act. The said penalties were deleted by the Dy.C.I.T.(Appeals) and the Tribunal on the ground that since advance tax paid by the assessee exceeded the assessed tax and since the assessment resulted in refund for the two years it amounted to a reasonable cause.

3 At the time of hearing, Mr.Akil Qureshi, learned Counsel appears for the revenue. In so far as respondent-assessee is concerned the notice is unserved. In view of these circumstances and taking into consideration that the amount of penalties involved are small, we decline to answer the question referred to us.

4 The references stand disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt